

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
10

11 JEFFREY E. WALKER,

12 Plaintiff,

13 v.

14 MINA BESHARA; FNU LUU; DAVID  
15 ROBLESS; AUDRA KING; JOSH  
16 BERGER; FNU STEVEN; REBECCA  
KORNBLUSH,

17 Defendants.  
18  
19

Case No. 1:20-cv-01050-HBK (PC)

FINDINGS AND RECOMMENDATIONS  
TO DENY PLAINTIFF'S MOTIONS FOR  
TEMPORARY RESTRAINING ORDERS AND  
FOR INJUNCTION OR RESTRAINING ORDER<sup>1</sup>

(Doc. Nos. 11, 12, and 18)

THIRTY DAY OBJECTION PERIOD

CLERK TO ASSIGN TO DISTRICT JUDGE

20 Before the Court are several motions for temporary restraining orders and one motion for  
21 an injunction or a restraining order, filed on February 12, 2021, February 16, 2021, and most  
22 recently on April 12, 2021, respectively. (Doc. Nos. 11, 12, and 18). While the allegations in  
23 each motion vary slightly, generally Plaintiff seeks a temporary or preliminary injunctive relief to  
24 enjoin several correctional officials from working in his assigned unit at Coalinga State Hospital.  
25 (*See generally* Doc. No. 11 at 1). For the reasons stated below, the undersigned recommends  
26 each of the motions be denied.

27  
28 <sup>1</sup> The undersigned submits these factual findings and recommendations to the District Court  
pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2019).

## I. BACKGROUND

Plaintiff Jeffrey E. Walker, a civil detainee, initiated this action by filing a *pro se* 42 U.S.C. § 1983 Complaint on July 30, 2020, while detained at the Coalinga State Hospital. (Doc. No. 1). The then-assigned magistrate judge granted Plaintiff's motion for leave to proceed as a pauper. (Doc. No. 4).

Turning to Plaintiff's motions for temporary restraining order, or a preliminary injunction, on February 12, 2021, the court initially reviewed Plaintiff's first and second motions, and issued an order on February 23, 2021. (Doc. No. 14). Noting the allegations of suicide, danger of death, or imminent serious harm to themselves or others set forth in Plaintiff's first and second motions, the court directed the clerk to send a copy of the pleadings to the appropriate institutional officials at Coalinga State Hospital for use as the officials deemed appropriate. (Doc. No. 14). As a result of the notice provided to officials on or about February 23, 2021, Plaintiff filed his motion for clarification seeking expedited review on March 5, 2021, mainly addressing the court's order. (Doc. No. 15). As previously stated, the court addresses Plaintiff's March 5 motion by separate order.

### A. The Complaint

In the complaint, Plaintiff names the following defendants: (1) Mina Beshara; (2) FNU Luu; (3) David Robles; (4) Audra King; (5) Josh Berer; (6) FNU Steven; and (7) Rebecca Kornbluh; (8) Treatment Team John and Jane Does; (9) Involuntary Medical Hearing John and Jane Does November- 2016; (10) Involuntarily Medical Hearing John and Jane Does- December 2016; and (11) David Avilla. (*Id.* at 1-2).

Plaintiff appears to have initiated this action as a civil detainee at Coalinga State Hospital, where he is receiving mental health treatment. (*See generally* Doc. No. 1). Plaintiff names the following defendants: (1) Mina Beshara; (2) FNU Luu; (3) David Robless; (4) Audra King; (5) Josh Berer; (6) FNU Steven; and (7) Rebecca Kornbluh; (8) Treatment Team John and Jane Does; (9) Involuntary Medical Hearing John and Jane Does November- 2016; (10) Involuntarily Medical Hearing John and Jane Does- December 2016; and (11) David Avilla. (*Id.* at 1-2). All claims appear to stem from incidents Plaintiff alleges occurred in 2016, approximately four years

1 prior to when plaintiff initiated this action, but were ongoing events during that time. (*See*  
2 *generally Id.*). The complaint is comprised of 34 pages and includes 103 separate number  
3 averments. The averments are disjointed, rambling and confusing and appear in a diary-like  
4 fashion detailing various unrelated incidents plaintiff experienced at different points in time with  
5 different staff, or other patients, at Coalinga State Hospital.

6 Although far from the model of clarity, it appears the incidents giving rise to the cause of  
7 action stem from Plaintiff being forcefully medicated, when defendants instead could have  
8 housed Plaintiff in a single cell, or being subjected to direct line of sight observations by male  
9 officials around-the-clock. (Complaint at 5-7, 10, 17) (alleging Plaintiff “could not get any sleep”  
10 with male staff observing him). Plaintiff claims defendants knew he “had a history of flash backs  
11 and reoccurring remembrance of past sexual abuse if left in certain predicaments resulting in  
12 Plaintiff being taken out to the hospitals on numerous occasions for sexual exams.” (*Id.* at 6).  
13 Plaintiff claims that he has suffers from post-traumatic stress disorder from a previous sexual  
14 assault in prison, which “triggers” him when he has male staff watching him, or when he sees  
15 Hispanic residents or staff, or gay staff, and causes him to experience anxiety attacks, chest pains,  
16 paranoia and results in him being administered psychotropic drugs against his will or taken to  
17 outside hospitals for examinations. (*Id.* at 7, 15). Plaintiff acknowledges that when he was  
18 housed in a single cell, he was not triggered and did not require forced medication, or to be  
19 transported for rape examinations, for a three-year period. (*Id.* at 20). Plaintiff includes details of  
20 his counseling sessions or “panel” interviews in his Complaint, admitting that a state court order  
21 required that he be involuntarily medicated, and that has a diagnosis of paranoia, bi-polar disorder  
22 and other mental health issues. (*Id.* at 23-25). As relief, Plaintiff seeks monetary damages and  
23 any other relief the Court deems appropriate. (*Id.* at 31).

#### 24 **B. The Motions for Temporary Restraining Orders and Preliminary Injunctions**

25 The allegations in Plaintiff’s first motion for a temporary restraining order are those  
26 alleged in the Complaint. In the first motion, Plaintiff asks that the court issue a restraining order  
27 to keep the following officials away from his assigned unit number 9: (1) David Robles; (2) Ed  
28 Fernandez; (3) Tomas Cervantes; (4) Arseniz Gutierrez, who Plaintiff identifies as the Unit

1 Supervisor; (5) David Avila; (6) Jason Montijo; (7) Sal Solano; (8) “Dr. . . Psychiatri[sic] from  
2 any contact as Dr. in Unit #9 or at all”; (9) “Steven G. Nurse Unit #9”; and (10) Jose Loeza.  
3 (Doc. No. 11 at 1). In the most recent motion, Plaintiff adds another three individuals to the  
4 proposed “no-contact list” including: (10) Christ Beller; (11) Rudy Chavez; and (12) Rudy Price.  
5 (Doc. No. 18 at 1).

6 In pertinent part, Plaintiff claims he has a “documented mental health history of P.T.S.D.  
7 not to be placed with certain people who abused me or any situations like the [line of sight] with  
8 males from past prison sex abuse w[h]ich could trigger me to become violent or cause re-  
9 occurrence of those memories w[h]ich is cruel and unusual punishment.” (Doc. No. 11 at 3). He  
10 further contends that he is “high risk medical with high blood pressure, an anxiety attack could  
11 kill [him].” (*Id.*). In his second and third motions, Plaintiff alleges that certain defendants have  
12 threatened him with retaliation for initiating a lawsuit against him, but not specify the nature of  
13 the retaliation. (Doc. No. 12 at 4; Doc. No. 18 at 1). Plaintiff states that initiating the instant  
14 action against defendants has caused him “panic” as he remembers “past prison abuse, sexual  
15 assault, excessive force.” (*Id.*). Plaintiff acknowledges his P.T.S.D “could be a recipe for a  
16 danger” if placed in a situation with the abuser. (*Id.*). And, again contends, that he has high blood  
17 pressure, so an anxiety attack could kill him. (*Id.* at 4-5). Plaintiff is concerned his inmate job  
18 may be taken away from him in retaliation for filing the instant action. (Doc. No 18 at 1-6).

## 19 II. APPLICABLE LAW

20 Federal Rule of Civil Procedure 65 governs injunctions and restraining orders, and  
21 requires that a motion for temporary restraining order include “specific facts in an affidavit or a  
22 verified complaint [that] clearly show that immediate, and irreparable injury, loss, or damage will  
23 result to the movant before the adverse party can be heard in opposition,” as well as written  
24 certification from the movant’s attorney stating “any efforts made to give notice and the reasons  
25 why it should not be required.” Fed. R. Civ. P. 65(b).

26 Temporary restraining orders are governed by the same standard applicable to preliminary  
27 injunctions, with the exception that preliminary injunctions require notice to the adverse party.  
28 *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F.Supp.2d 1111, 1126

1 (E.D. Ca. 2001); *see also* Fed. R. Civ. P. 65(a). Local Rule 231, however, requires notice for  
2 temporary restraining orders as well, “[e]xcept in the most extraordinary of circumstances,” and  
3 the court considers whether the applicant could have sought relief by motion for preliminary  
4 injunction at an earlier date. L.R 231 (a)-(b) (E.D. Ca. 2019). A temporary restraining order  
5 “should be restricted to serving [its] underlying purpose of preserving the status quo and  
6 preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.”  
7 *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S.  
8 423, 439 (1974).

9 A temporary restraining order, is “an extraordinary remedy” and may be issued only if  
10 Plaintiff establishes: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in  
11 the absence of preliminary relief; (3) that the balance of equities tips in his/her favor; (4) that an  
12 injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).  
13 Plaintiff bears the burden of clearly satisfying all four prongs. *Alliance for the Wild Rockies v.*  
14 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). A TRO will not issue if Plaintiff merely shows  
15 irreparable harm is possible – a showing of likelihood is required. *Id.* at 1131.

16 The injunctive relief an applicant requests must relate to the claims brought in the  
17 complaint. *See Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir.  
18 2015) (“When a Plaintiff seeks injunctive relief based on claims not pled in the complaint, the  
19 court does not have the authority to issue an injunction.”). Absent a nexus between the injury  
20 claimed in the motion and the underlying complaint, the court lacks the authority to grant Plaintiff  
21 any relief. *Id.* at 636.

22 The Prison Litigation Reform Act (“PLRA”) imposes additional requirements on prisoner  
23 litigants seeking preliminary injunctive relief against prison officials. In such cases,  
24 “[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to  
25 correct the harm the court finds requires preliminary relief, and be the least intrusive means  
26 necessary to correct that harm.” 18 U.S.C. § 3626(a)(2); *Villery v. California Dep’t of Corr.*,  
27 2016 WL 70326, at \*3 (E.D. Cal. Jan. 6, 2016). As the Ninth Circuit has observed, the PLRA  
28 places significant limits upon a court’s power to grant preliminary injunctive relief to inmates,

1 and “operates simultaneously to restrict the equity jurisdiction of federal courts and to protect the  
2 bargaining power of prison administrators—no longer may courts grant or approve relief that  
3 binds prison administrators to do more than the constitutional minimum.” *Gilmore v. People of*  
4 *the State of California*, 220 F.3d 987, 998-99 (9th Cir. 2000). The court’s jurisdiction is “limited  
5 to the parties in this action” and the pendency of an action “does not give the Court jurisdiction  
6 over prison officials in general or over the conditions of an inmate's confinement unrelated to the  
7 claims before it.” *Beaton v. Miller*, 2020 WL 5847014, at \*1 (E.D. Cal. Oct. 1, 2020). If a  
8 prisoner has been transferred, any sought injunctive relief against the previous facility becomes  
9 moot if the prisoner “has demonstrated no reasonable expectation of returning to [the prison].”  
10 *Johnson v. Moore*, 948 F.2d 517, 519 (9th Cir. 1991); *Florence v. Kernan*, 813 F. App'x 325, 326  
11 (9th Cir. 2020). Finally, state governments have “traditionally been granted the widest latitude in  
12 the dispatch of [their] own internal affairs.” *Rizzo v. Goode*, 423, U.S. 362, 378 (1976) (citations  
13 omitted). This deference applies even more strongly when the court is asked to involve itself in  
14 the administrative decisions of a prison. *See Turner v. Safely*, 482 U.S. 78, 85 (1987); *Sandin v.*  
15 *Conner*, 515 U.S. 472, 482-83 (1995).

### 16 III. DISCUSSION

17 Having reviewed Plaintiff’s motions, the court does not find that Plaintiff has satisfied his  
18 burden to show that immediate and irreparable injury, loss, or damage will result to him before  
19 officials at Coalinga State Hospital can be heard, thus precluding a temporary restraining order  
20 under Fed. R. Civ. P. 65 and Local Rule 231(a). Further, Plaintiff’s allegations do not satisfy the  
21 requisite four elements necessary for issuance of a temporary restraining order, or a preliminary  
22 injunction.

23 Generally, Plaintiff’s motions seek an order from the court directing which employees of  
24 Coalinga State Hospital can enter Plaintiff’s assigned housing unit. *Supra* at 3-4. Such an order  
25 would be intrusive into the daily operations at Coalinga State Hospital and precisely those  
26 restrained by case law. *Bell v. Wolfish*, 441 U.S. 520, 546 (1979) (maintaining institutional  
27 security and preserving internal order and discipline are central to all other corrections goals).  
28 While such relief may be necessary in extraordinary cases, Plaintiff has not satisfied the burden

1 here, especially when considering the allegations in the motions and the complaint wherein  
2 Plaintiff acknowledges at an unspecified time, he became argumentative with staff and was  
3 within arm's length. *Supra* at 3 (citing Doc. No. 1 at 8).

4 Further, Plaintiff does not appear likely to succeed on his complaint. Liberally construed,  
5 Plaintiff's Complaint appears to allege that the failure to house plaintiff in a single cell and  
6 instead being placed on direct line of sight observation caused him to experience P.T.S.D., which  
7 in turn resulted in him being forced medication. (*See* generally Doc. No. 1). Due to numerous  
8 deficiencies in the Complaint, the court has issued a § 1915A screening order directing plaintiff to  
9 file an amended complaint. The allegations in plaintiff's motions are directed at preventing  
10 retaliatory acts from occurring based on the filing of the instant lawsuit. The allegations in all  
11 motions are directed to which staff can enter Plaintiff's dorm in attempt to restrict nearly a dozen  
12 staff's access to Plaintiff's dormitory area. Thus, the allegations in the motions are not directly  
13 related to the issues in the complaint.

14 Plaintiff does not provide specific facts about how he will suffer immediate or irreparable  
15 harm. Plaintiff does not allege that he has been physically harmed, instead he repeatedly alleges  
16 he suffers from P.T.S.D and does best when housed in a single dormitory. Similarly, Plaintiff's  
17 motion wholly fails to address whether the balance of equities and the public interest favor  
18 granting injunctive relief, especially when they tip in favor of state prison officials and internal  
19 affairs such as more than a dozen staff employment assignments. Nor does Plaintiff certify in  
20 writing what efforts were made to serve the adverse party with notice, or why notice should be  
21 excused. Based on the foregoing reasons, the undersigned recommends the district court adopt  
22 these findings and recommendations and deny Plaintiff's motions.

23 Accordingly, it is **ORDERED**:

24 The Clerk of Court is directed to assign a district judge to this action.

25 It is further **RECOMMENDED**:

26 Plaintiff's motions for a temporary restraining order and/or preliminary injunction (Doc.  
27 Nos. 11, 12, 18) be **DENIED**.  
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

IT IS SO ORDERED.

Helena M. Barch-Kuchta  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE